

Montana Water Court
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FILED
04/18/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41G-0548-R-2023
Weisz, Madeleine
2.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Sandra Sires-Kraha

CASE 41G-0548-R-2023
41G 35272-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claim 41G 35272-00 is an irrigation water right from the Jefferson River. It appeared in the Basin 41G Preliminary Decree with following issue remark concerning the place of use:

THE PLACE OF USE IS LOCATED IN SESENE SEC 33, TWP 01S RGE 05W MADISON COUNTY.

2. The place of use for claim 41G 35272-00 appeared in the 41G Preliminary Decree with a place of use described as the S2SENE of Section 1, T1S, R5W. Information in the claim file, specifically the attachments to the statement of claim form supports the DNRC's issue remark. The order consolidating set a filing deadline for the claimant to address the issue remark. The order stated that if nothing was filed by the deadline, the place of use would be corrected pursuant to the issue remark. Nothing was filed by the deadline.

3. The place of use should be corrected to the SESENE of Section 33, T1S, R5W based on the DNRC issue remark. The issue remark is resolved and should be removed from the claim abstract.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process.

3. If a claimant fails to comply with an Order issued by the Water Court in its review of issue remarks, including an Order issued by a Water Master appointed by the Court, the Court on its own initiative may amend or dismiss the claim to conform with

information in the claim file or information obtained as part of the adjudication process. Section 85-2-248(9) MCA. The information before the court indicates that claim 41G 35272-00 should be modified to the SESENE of Section 33, T1S, R5W.

RECOMMENDATIONS

1. Claim 41G 35272-00 should be modified as provided above.
2. The issue remark should be removed from claim 41G 35272-00.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the claim has been dismissed.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

Sandra Sires-Kraha
PO Box 80
Whitehall, MT 59759-0080

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 35272-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: SANDRA SIRES-KRAHA
PO BOX 80
WHITEHALL, MT 59759 0080

Priority Date: JUNE 20, 1961

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 89.76 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 5.37

Source Name: JEFFERSON RIVER

Source Type: SURFACE WATER

ALSO KNOWN AS WALKS-HUNT DRAIN DITCH

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSENE	33	1S	5W	MADISON

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Period of Use: MAY 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	5.37		SESENE	33	1S	5W	MADISON

Total: 5.37